

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

SHERRY C. TARANTO, *et al.*

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:08cv1356-LG-RHW

STATE FARM FIRE AND CASUALTY INSURANCE

DEFENDANT

PLAINTIFFS' RESPONSE TO DEFENDANT'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT

Note:

Plaintiffs are addressing Defendant's Motion for Partial Summary Judgment as to Punitive Damages, Extra-contractual Damages, and Attorneys' Fees by separate responsive pleadings.

COMES NOW, the Plaintiff, Sherry C. Taranto, by and through undersigned counsel, and files this, her *Response to Defendant's Motion for Partial Summary Judgment* and would state as follows:

1. Defendant have moved for partial summary judgment in regards to the breach of contract claims of Plaintiffs Sherry C. Taranto, Kay C. Sabadie, Kim C. Dassey, Tab J. Coleman, William S. Coleman, Dean J. Coleman, and Tara C. Brignac (hereinafter "Coleman Plaintiffs") alleging no contract existed between these Plaintiffs and the Defendant.
2. Defendant further alleges the Coleman Plaintiffs named above cannot sustain claims for personal property damage since none of these Plaintiffs were "insureds" or "residents" under the policy.
3. Defendant further alleges that Coleman Plaintiffs cannot make additional claims for punitive damages, attorneys' fees and extra-contractual damages since they cannot prove Defendant acted with malice, gross negligence and reckless disregard in denying their claims.
4. The policy is not clear as to Fay Coleman's interest. Fay Coleman was incorrectly listed as the mortgagee on the property. This is nonsensical as no mortgage existed on the property in April 2005 when the Policy was written. This clerical error and/or ambiguous language should be held

against the drafter of the contract. Accordingly, the Court should find that Fay Coleman was a name insured.

5. At the time of Hurricane Katrina, Gail Bracamotes owned a one half (1/2) interest in the property. The remaining one half (1/2) interest was owned by Fay Coleman's intestate heirs since Fay Coleman died widowed and intestate on August 13, 2002. Fay's heirs were determined to be her seven children, namely Plaintiffs Sherry C. Taranto, Kay C. Sabadie, Kim C. Dassey, Tab J. Coleman, William S. Coleman, Dean J. Coleman, and Tara C. Brignac.

6. Sherry Taranto testified in her deposition that her and her siblings continued to make one half (1/2) payments of the insurance premiums for the vacation home. The payments were made by personal checks drawn on the account of William Coleman, Fay's deceased husband. Defendant possesses no evidence or proof contrary to the testimony of Sherry Taranto, accordingly Fay Coleman's heirs contributed one half (1/2) of the premiums for the vacation home.

7. All Plaintiffs used and resided at the Taranto vacation home. Accordingly, all Plaintiffs should be considered residents under the policy.

8. A genuine issue of material fact exists as to whether Fay Coleman was an insured under the policy. Further, a genuine issue exists as to whether the seven children of Fay Coleman, Plaintiffs Sherry C. Taranto, Kay C. Sabadie, Kim C. Dassey, Tab J. Coleman, William S. Coleman, Dean J. Coleman, and Tara C. Brignac, have a legal right to make a claim for damages against the insurance policy with Defendant.

9. In support of their response, Plaintiffs file this Response and supporting Memorandum.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff, Sherry Taranto, prays that Defendant's *Motion for Partial Summary Judgment* be denied

Respectfully Submitted,

SHERRY C. TARANTO, ROBERT C.  
BRACAMONTES, JR., GAIL L. BRACAMONTES,  
KAY C. SABADIS, KIM C. DASSEY, TAB J.  
COLEMAN, WILLIAM S. COLEMAN, JR., TARA  
C. BRIGNAC AND DEAN J. COLEMAN,  
Plaintiffs

By: /s/ Darryl M. Gibbs  
Darryl M. Gibbs

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**CERTIFICATE OF SERVICE**

I, Darryl M. Gibbs, do hereby certify that I have this day electronically filed the foregoing *Plaintiff, Sherry C. Taranto's, Response to Defendant's Motion for Partial Summary Judgment*, with the Clerk of the Court using the ECF system which sent notification of such filing to the following; delivered a true and correct copy of the above, foregoing, in a manner prescribed by law to the following:

James H. Heidelberg, Esq.  
Jessica M Dupont, Esq.  
Heidelberg, Steinberger,  
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ATTORNEY FOR DEFENDANT, STATE FARM FIRE AND CASUALTY

THIS the 10<sup>th</sup> day of May, 2010.

/s/ Darryl M. Gibbs  
Darryl M. Gibbs